Testimony of Philip M. Burns
On Behalf of the American Bankers Association
Before the
Subcommittee on Financial Institutions and Consumer Credit
of the
Financial Services Committee
United States House of Representatives

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Mr. Chairman, I am Philip Burns, Chairman and CEO of Farmers & Merchants National Bank in West Point, Nebraska, and a member of the American Bankers Association's Government Relations Council. I am pleased to be here today on behalf of the American Bankers Association ("ABA"). ABA brings together all elements of the banking community to best represent the interests of this rapidly changing industry. Its membership – which includes community, regional, and money center banks and holding companies, as well as savings institutions, trust companies, and savings banks – makes ABA the largest banking trade association in the country.

I want to thank you, Mr. Chairman, for holding this hearing. The issues we are here to discuss this morning are not new – in fact, they have been debated in this legislative body for many years. However, the statutory context within which today's discussion will take place is quite different. In 1999, Congress took an historic step to modernize the regulation of the financial services sector by passing the Gramm-Leach-Bliley Act ("GLB Act"). This legislation recognized that decades-old restrictions were stifling competition, and that both consumers and the economy would benefit from streamlining the regulatory framework. The fundamental tenet of the GLB Act is to create a level playing field among providers of a wide array of financial and related services to promote free and fair competition.

Recognizing that a dynamic marketplace requires a flexible regulatory structure, the GLB Act gives the Federal Reserve Board ("Fed") and the Department of the Treasury ("Treasury") the authority, within certain guidelines, to permit banking

organizations to offer additional products and services not specifically listed in the law. This authority for regulators to respond to changing market conditions is critical to achieving the pro-competitive goal of the GLB Act. Without it, the regulatory framework of the financial services industry will be outdated very quickly, and the industry and its customers will end up back in a regulatory straitjacket – the very problem the GLB Act was intended to resolve. Thus, in putting forth the proposal on real estate brokerage and management, the Fed and Treasury are following exactly the process Congress intended when it passed the GLB Act only a year-and-a-half ago.

In today's marketplace, securities firms, insurance companies and real estate firms can and do provide a full range of real estate services, from finding a home, to financing it, to insuring it. Banking organizations, however, are excluded from real estate brokerage activities – the crucial first step in a real estate transaction. Many banks, my own included, believe that our customers and our communities would benefit if banking organizations were permitted to offer these services. We believe this situation is a perfect example of the type of competitive inequity that Section 103 (a) of the GLB Act was intended to address, and demonstrates why regulatory flexibility is such an important component of financial modernization.

Let me assure you that the competitive issues we are talking about here this morning are important to small banking organizations. In West Point, I face competition from many financial service firms that offer real estate brokerage. And, importantly, many real estate brokerage firms are now placing loan originators in their real estate offices. ***Some real estate agents are now objecting to the very combinations that they themselves have undertaken – offering brokerage, mortgage banking, and, often, insurance under one roof.***

It is important to my customers, my community and the survival of my bank that we be able to offer the same products and services as our competitors – and that includes real estate brokerage and management.

In my statement today, I would like to make three key points:

- Allowing banking organizations to act as real estate brokers and property managers will enhance competition – and more competition means more choices, more efficient services at lower prices, and greater convenience for customers. This is clearly in accordance with the pro-competitive spirit of the GLB Act.

- The GLB Act recognized that achieving the goal of promoting competition necessarily required regulatory flexibility. Section 103 (a) provides that flexibility by authorizing the Fed and the Treasury, subject to certain statutory guidelines, to approve additional activities for banking organizations – including real estate brokerage and real estate management.[1]

- All consumer protections ***– including all state licensing, qualification, sales practices, and continuing education requirements –*** would apply equally to bank-affiliated real estate agents. In fact, the rule proposed by the Fed and the Treasury actually ***increases*** consumer protections by extending to bank-affiliated real estate agents existing federal prohibitions on tying other services to credit extensions.

I will discuss these points in detail in the remainder of my statement.

[1] The term "banking organization" is used in this statement to mean activities conducted in affiliates of either the bank or within a Financial Holding Company (FHC). Under the Gramm-Leach-Bliley Act, activities determined to be financial in nature or incidental to such financial activity may be engaged in by an FHC or a subsidiary of a national bank (with three exceptions, including insurance underwriting, real estate development and merchant banking, for the bank subsidiary).

Competition is Good for Consumers

The benefits of competition are well known. In a free market, businesses choose to offer new products if they believe they can provide better services at competitive prices. Obviously, not all banking organizations will choose to offer real estate services, but those that do will enter the market because they believe they can meet or beat the competition. Increasing the number of providers raises the bar for all the participants, forcing improvements in efficiency, pricing and service levels – ***all to the benefit of homebuyers***.

Opposition to bank-affiliated real estate services is an obvious attempt to keep new and innovative providers of real estate services out of the market. Such an approach can only be termed anti-competitive and anti-consumer.

While opponents of increased competition work to block banking organizations from real estate brokerage, they often provide a full range of financial services themselves, combining real estate, insurance, and securities products with mortgage and banking products. In fact, that is exactly what is happening in today's real estate market. For example:

- ***Long & Foster***, the largest real estate firm here in the Washington D.C. area, makes no bones about how it can provide end-to-end services. One ad (see next page) touts it as being "More Than a Great Real Estate Company. We're Also A Great Mortgage, Title, and Insurance Company, Too!" The ad goes on to say: "Imagine the convenience of buying a home, securing the mortgage, arranging the title work, and getting homeowners' insurance – all in one place!".

- **C*endant Corporation*** provides all types of real estate, mortgage and insurance services through its affiliates ***Century 21***, ***Coldwell Banker,***

LONG & FOSTER COMPANIES

Long & Foster—More Than A Great Real Estate Company.

We're Also A Great Mortgage, Title, And Insurance Company, Too!

Since 1968, the LONG & FOSTER COMPANIES have grown to become the largest and most respected real estate company throughout our five-state Mid-Atlantic region, with annual sales of $13.3 billion.

We've also become quite a powerhouse in mortgages, title, and insurance, too.

Imagine the convenience of buying a home, securing the mortgage, arranging the title work, and getting homeowners' insurance—all in one place!

That's precisely what the LONG & FOSTER COMPANIES do for their clients and customers: deliver top-quality real estate and related financial services—all in one place—from a name synonymous with customer satisfaction and trust.

Convenience costs no more with the LONG & FOSTER COMPANIES. In fact, it could cost you much less. Rely on your professional Long & Foster Sales Associate to put you in touch with the other members of the LONG & FOSTER COMPANIES family, whose expertise in mortgages, title, and insurance fully complements that of our expert REALTORS®.

LONG & FOSTER COMPANIES
LONG & FOSTER, REALTORS®

LONG & FOSTER COMPANIES
PROSPERITY MORTGAGE COMPANY

LONG & FOSTER COMPANIES
MID-STATES TITLE INSURANCE AGENCY, INC.

LONG & FOSTER COMPANIES
LONG & FOSTER INSURANCE AGENCY, INC.

Real-Edge Services, All in One Place.™

ERA Real Estate, Cendant Mortgage and FISI-Madison Financial.

- ***USAA*** provides insurance, banking and other diversified financial services including real estate advisory, management and transaction services to corporate and institutional clients through USAA Real Estate Company, USAA Realty Company, and ***USAA Federal Savings Bank***.

- ***GMAC Home Services*** advertises the "Complete Connection," providing all types of real estate services, including brokerage, through ***GMAC Real Estate*** and financing through newly authorized ***GMAC Bank*** and ***GMAC Mortgage —*** also described as the "GMAC Universe."

- ***Prudential Insurance Company*** provides insurance, real estate brokerage and relocation, securities investments and a full range of banking services (including deposits), among its many products through ***Prudential Bank***.

- ***Crye-Leike Inc, Realtors***, the biggest real estate company in Tennessee, combines real estate and banking through ***First Trust Bank for Savings,*** which has as its largest shareholder Harold Crye and Richard Leike.

The point here is that these firms bring together the very types of synergies that the opponents of bank participation are now protesting. Paul Harrington, president of DeWolfe New England which is one of the largest real estate firms in the Northeast, was quoted in the *Boston Globe* as saying: "We believe that banks ought to be able to compete with us as long as there are safeguards to insure that deposits are not being improperly invested. It would be hypocritical for us to say otherwise because we promote the fact that we offer customers convenience through one-stop shopping."[2]

Both large and small banking organizations have an interest in this issue. While some large banks may be interested in providing high-quality, cost-effective real estate

[2] *The Boston Globe, February 25, 2001*

services, let me assure you that banks like mine are also keenly interested in providing these services. I believe, as do many of my colleagues who run small community financial institutions, that these services would significantly benefit our customers and our communities.

In fact, the ability to offer real estate brokerage may be more important for smaller institutions. Rural communities may lack real estate agents or are served only by branches of brokers in other towns because there is insufficient business to warrant a local brokerage office. In such small communities, the bank is perceived as the place that will have the greatest amount of information on what properties are for sale, including farmland acreage in agricultural communities.

Many community bankers view real estate brokerage as simply rounding out the services they provide to the community and solidifying customer relationships – which, ultimately, is the name of the game in today's competitive business environment. Their goal is to be viewed by their customers as a one-stop financial services supermarket. For the typical community bank, the intent is *not* to turn real estate brokerage into a major income-producing center, but rather to provide high-quality, high-personal-touch services for customers whose needs the bankers intimately understand and whom they already serve in other capacities. As such, in communities where there are no real estate firms, community banks typically contemplate establishing a subsidiary and licensing one or more employees as real estate brokers (fully subject, of course, to state real estate licensing provisions). In other instances, small banks are likely to partner with existing real estate brokers to provide these services.

Banks that already offer real estate services through the trust department frequently find themselves having to explain to customers that the bank cannot help them with these services outside the trust relationship. These customers do not understand why the bank is unable to do so. Authority to offer real estate services by the banking organization would bridge this unnecessary gap. In many instances, the bank would

likely hire an outside broker – as is done now with trust activities – and work with him or her, sharing commissions as permitted under state law and negotiated between the parties.

Many agents are not concerned by the prospect of banking organizations offering real estate services. Many look forward to the opportunity to partner with a local bank. Independent agents who provide good service today know that they will be competitive with ***anyone***, whether the competitor is another independent agent or one affiliated with a bank. The views of these real estate agents are often lost in the emotional rhetoric of their trade association. Here are a few examples of comments filed by real estate agents with the regulators on this proposal:

- A real estate broker in North Carolina writes: "I am a 38-year veteran of the real estate industry and do not agree with our National Association of [Realtors]….There are several reasons I feel this way, primarily because our small family-owned business has always faced stiff competition from large real estate firms, yet we have been able to earn a good, honest living. I believe that competition is the American way and if you're good at what you do, you can survive whether large or small."

- A real estate broker in Wisconsin writes: "I don't recall the NAR concerning themselves with real estate brokers having access to on-line companies therefore cutting the independent mortgage banker and local lender out of the transaction."

- Another real estate agent notes: "I would welcome the hopefully more professional business management that banks would likely bring to this business. With most real estate being part-time people with limited training, the real estate business is full of mis-information, poor service, etc., a situation that could be improved with bank involvement. Furthermore, the American consumer deserves more true competition in this business. Bank owned real estate agencies may be able to lower transactions costs to consumers through

aggregation of services benefiting the public as a whole."

- A broker from California writes: "Additional competition will be healthy for the industry. Banks and other financial institutions have learned how to meet the needs of consumers and to handle their financial matters. One's home is the biggest financial asset most consumers will ever deal with. If agents are so special for consumers, then they have nothing to fear. Maybe we could see commissions come down!"

- Another real estate agent writes: "NAR [National Association of Realtors] predicted the doom and gloom many, many years ago when franchise brokerage was in its formative stages. ERA, RE/MAX, Coldwell Banker et al were all predicted to end 'mom and pop' real estate firms. These franchises have come, many have gone or merged with others. And yet still, 'mom & pop' brokerage firms continue to survive because of the personal attention. I welcome the competition, and I will continue to survive."

Simply put, the best, most efficient providers of any product or service will be leaders in any market. Added competition does raise the bar for everyone, and certainly should raise the expectations of consumers that they are getting the best possible service at the most competitive price.

The GLB Act was designed to enhance competition among financial services providers and, importantly, to end the problem of banking organizations being unable to compete with other financial organizations that had more freedom to adjust to the marketplace. I have already discussed how real estate companies offer end-to-end services, including mortgages. Credit unions can also offer real estate brokerage services. For example, recently several credit unions in Wisconsin jointly purchased a majority interest in one of the state's larger real estate brokerage firms. Restricting banking organizations from offering the same end-to-end combination of real estate

services and mortgage lending as others will place banks at a tremendous competitive disadvantage – losing not just an opportunity in the brokerage field, but also the opportunity to interact with the customer in the first place and to offer one of the most traditional of banking products – the mortgage loan.

In fact, if the lobbying efforts of the real estate agent's trade association are taken to its logical conclusion – and there is to be no affiliation of banking and real estate brokerage – then it would only be fair and logical to require the divestiture of the traditional banking activities – particularly mortgage lending – now increasingly being offered by real estate brokerage firms.

The GLB Act Was Designed to Allow Flexibility to Adjust to the Marketplace

The Gramm-Leach-Bliley Act established a framework for modernizing our financial system. After working on this for the last 20 years, Congress recognized the need for flexibility in the face of a rapidly evolving financial landscape. As Senator Phil Gramm said at the signing ceremony for this Act: "The world changes, and Congress and the laws have to change with it….We have learned that we promote economic growth and we promote stability by having competition and freedom."

In the years immediately preceding passage of the GLB Act, Congress recognized that the statutory standard for regulatory approval of new activities for bank holding companies — the "closely related to banking" standard — was woefully inadequate in an economy transformed by technological progress. Thus, Congress agreed to a new standard to enable banks and bank holding companies to remain competitive no matter in what direction financial services evolved. That new standard — activities that are financial in nature or incidental to a financial activity — was intended to provide the flexibility Congress knew would be necessary. Those activities may be conducted only in financial holding companies ("FHC") or financial subsidiaries meeting certain safety and soundness and community needs standards enumerated in the statute.

However, Congress did not give the regulators unfettered discretion when making the determination that an activity was financial in nature. Section 103(a) of the GLB Act specifically set forth certain traditional banking activities that Congress knew were clearly financial in nature. Importantly, it further set forth three categories of activities and authorized the regulators to determine the extent to which the activities are financial in nature or incidental to a financial activity. Those activities are:

1. Lending, exchanging, transferring, investing for others, or safeguarding financial assets other than money or securities;
2. Providing any device or other instrumentality for transferring money or other financial assets; and
3. Arranging, effecting, or facilitating financial transactions for the account of third parties. [3]

The GLB Act requires that the regulators incorporate into their determinations, the statutory purposes, changes in the financial services industry, technological innovations, and competitive factors.[4] Congress intended clearly by including these factors that banking institutions be kept competitive. The GLB Act, therefore, adopted a very broad test to determine what activities are permissible for an FHC and financial subsidiaries.[5]

[3] Section 103(a).

[4] Specifically, the statutory factors are: (1) the purposes of [the BHCA] and the GLBA; (2) changes or reasonably expected changes in the marketplace in which financial holding companies compete; (3) changes or reasonably expected changes in the technology for delivering financial services; and (4) whether such activity is necessary or appropriate to allow a financial holding company and the affiliates of a financial holding company to: (i) compete effectively with any company seeking to provide financial services in the U.S.; (ii) efficiently deliver information and services that are financial in nature through the use of technological means, including any application necessary to protect the security or efficacy of systems for the transmission of data or financial transactions; and (iii) offer customers any available or emerging technological means for using financial services or for the document imaging of data. GLBA section 103(a), new BHCA section 4(k)(3).

[5] Last year, the ABA and several large and small banks petitioned the Fed and the Treasury for the ability to provide real estate brokerage and property management services. The agencies issued their proposal to permit such activities on January 3, 2001. Comments were due on May 1, 2001.

ABA strongly believes that both real estate brokerage and property management meet the criteria set forth in the statute. For most consumers, finding, financing, and insuring a home is by far the largest financial transaction they will ever undertake. Real estate brokerage involves negotiating a contract for the purchase, sale, exchange, lease, or rental of real estate for others. It seems clear that real estate brokerage services fall squarely into the category of "arranging . . . or facilitating financial transactions for the account of third parties."

Real estate management is the business of providing day-to-day management of real estate assets as well as the provision of advice and related services with respect to the purchase, sale, exchange, lease, or rental of real estate assets. Given this definition, real estate management clearly falls in the category of "arranging…or facilitating financial transactions for the account of third parties." Thus, with the passage of the GLB Act, we believe there is clear authority for the regulators to permit banks to engage in real estate brokerage and management.

The National Association of Realtors ("NAR") would have this Subcommittee believe that Congress meant to preclude real estate activities in the GLB Act and that the legislation accomplished that goal. ***This is simply untrue, and we have seen no specific evidence to back up this unfounded charge.***

To the contrary, the GLB Act itself demonstrates Congress's knowledge of this issue and its determination that financial subsidiaries of national banks should be prohibited ***only*** from engaging in real estate ***development*** activities – the riskier aspect of the business in which the banking organization takes an ownership position.[6] Had Congress intended to prevent banking organizations from engaging in the agency activities of real estate brokerage and real estate management, it clearly knew how to do so. ***The fact that Congress chose only to prohibit real estate development leads to the conclusion that Congress did not intend to restrict agency activities.***

[6] We are submitting for the record a detailed analysis of the legislative history of the GLB Act.

In fact, the NAR's charge that the Fed/Treasury proposal violates the legislative intent of the GLB Act is not based on any Congressional intent to specifically preclude real estate brokerage – because there wasn't any such intent. Certainly the NAR had every opportunity to raise the issue with Congress in 1999 and either chose not to or did so without success. Rather, NAR's objection is based on the fact that Congress, in the GLB Act, prevented the further mixing of banking and commerce through unitary savings and loan holding companies. However, this argument assumes that Congress determined that real estate brokerage was commerce and not financial in nature or incidental to a financial activity, which it clearly did not. To the contrary, Congress explicitly left the determination of whether or not a given activity is financial in nature or incidental to a financial activity to the Fed and Treasury. To reiterate, if Congress had wanted to make such a determination to exclude the proposed activities, it would have explicitly done so – as it did with real estate development.

Having just a year-and-a-half ago made the decision to leave that determination to the regulators – so that they could keep the financial structure up-to-date on an ongoing basis – Congress is now being asked by the NAR to intervene in the very process the Congress has just created. ***Thus, it is NAR that is violating the clear intent of the GLB Act – the intent of Congress to have these very types of determinations made by the Fed and Treasury, based on their expert knowledge of the changes in the financial services marketplace.***

As noted above, the GLB Act requires that the regulators consider ***competitive factors*** and ***technological innovations*** when determining whether activities are financial in nature. A particularly applicable statutory phrase to focus on in this context is whether the activity is "appropriate" to allow institutions to "compete effectively with any company seeking to provide financial services in the U.S." We have already demonstrated that real estate brokerage firms are providing financial services throughout the U.S. Clearly, the fact that real estate brokerage firms are offering mortgages and other financial services must be part of the regulatory consideration. In addition to the examples of real estate firms that integrate brokerage services with mortgage financing

and insurance, let me give you one more that is not a household name in most areas of the country. Howard Hanna Real Estate Services – the largest real estate company in Pennsylvania, Ohio and West Virginia – advertises the following: "We can handle every aspect of any real estate transaction from appraisal to closing 'IN-HOUSE'." Through their mortgage bank, ***Howard Hanna Financial Services*** – the largest independent mortgage bank in western Pennsylvania – they are easily able to combine all real estate services with mortgage financing.

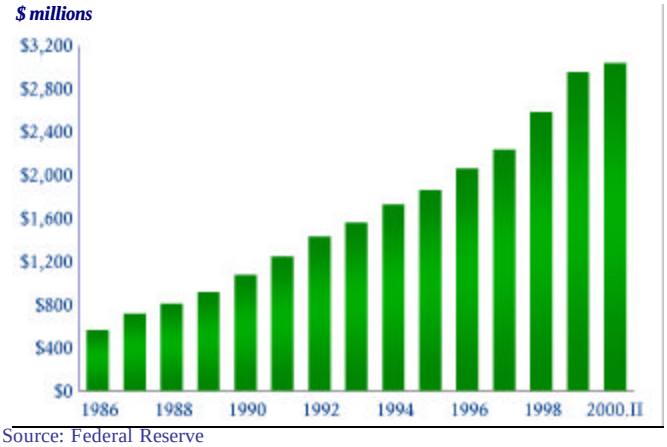
In fact, Howard Hanna has recently established a program known as "Partnering for Profitability" to provide smaller real estate companies with mortgage processing services, underwriting, closing and secondary market activities, as well as various loan products.

Simply put, while real estate firms like Howard Hanna can offer "every aspect of any real estate transaction," banking organizations cannot. Competitive imbalances like this are the very thing that Congress sought to correct when it enacted the GLB Act, and we believe that the use of the flexibility granted to the regulators under Section 103 (a) is clearly justified in the case of real estate brokerage and management authority for banking organizations.

Technological innovations have also had a dramatic impact on real estate markets. Perhaps the biggest change is the development of the secondary market for mortgage loans and the efficient process that bundles individual home loans into highly liquid, globally-traded securities (see Chart 1). The increasing importance of the secondary

Chart 1

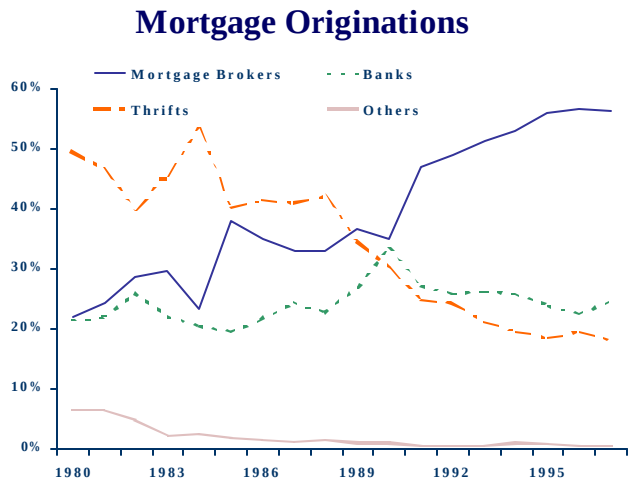
Mortgage Backed Securities Outstanding



Source: Federal Reserve

market has facilitated the rapid growth of mortgage lending outside traditional banking and savings institutions (see Chart 2). In fact, securitization has significantly changed the very nature of mortgage funding, enabling real estate firms to establish their own mortgage companies and to offer end-to-end real estate transactions – helping a buyer find a home, finance it, and insure it. ***The result is that traditional deposit-based lenders – banks and thrifts – are often bypassed completely. These are exactly the kinds of technological changes the GLB Act authorized the Treasury and the Fed to address.***

Chart 2



Source: MBA

The dominance of the secondary market is clear evidence that this form of funding for plain vanilla mortgage loans is generally superior in terms of costs to funding with bank deposits. If banks somehow enjoyed some special benefit from deposits, or deposit insurance (which banks pay for through premiums and extensive regulatory costs), banks would not be selling into the secondary market, and the secondary market would not control an ever increasing share of the marketplace. No amount deposit insurance can counteract this fundamental principle of efficient markets. More importantly, access to this secondary market source of funding is available ***equally*** to mortgage and banking organizations, and is clearly why real estate companies increasingly are affiliating with mortgage banking companies.

To summarize this section, the GLB Act recognized that achieving the goal of promoting competition necessarily required regulatory flexibility. Section 103 (a) provides that flexibility by authorizing the Fed and the Treasury, subject to certain

statutory guidelines, to approve additional activities for banking organizations – including real estate brokerage and real estate management. The ABA believes strongly that real estate brokerage and management meet the criteria. Of course, the Fed and Treasury have not made any determination on this proposal. They may allow these activities, they may not allow them, or they may reconsider the issues at a later date. Regardless of their ultimate decision, ***the Fed and Treasury should be allowed to follow the process Congress created only a year-and-a-half ago***.

All Consumer Protections Are Maintained and Bank Safety and Soundness Is Protected

If banking organizations offer real estate services, consumers would actually have more protections under the law than they do today. ***All rules applicable to real estate brokers, including all state licensing, qualification and sales practices will apply equally to bank-affiliated real estate agents.***

NAR has raised the specter of customers being taken advantage of as a result of conflicts of interest that may potentially arise when a real estate broker is affiliated with a lender. The simple fact is that the exact same potential for such abuse occurs, for example, each time an agent from Century 21, Coldwell Banker, ERA (all of whom are affiliated with Cendant) GMAC, Long & Foster or USAA helps a customer buy or sell a house. And yet, although these integrated real estate organizations, as well as state banks in many states and credit unions, have been selling real estate and funding mortgages for years, there has been no outcry about these conflicts of interest. Why? — Because the Real Estate Settlement Procedures Act ("RESPA")[7] requires realtors affiliated with lenders to disclose that fact to customers before the purchase occurs.

[7] 12 U.S.C. § 2601 *et seq*

The RESPA disclosure,[8] which must be on a separate piece of paper, must state the relationship between the real estate agent and the lender and provide the estimated charges or range of charges of the lender. It must also notify the customer that he or she is *not* required to use the lender and is free to shop around for a better deal. If the real estate agent requires the use of its affiliated lender, that agent violates the kickback and unearned fee provisions of Section 8 of RESPA. The customer is expected to sign an acknowledgement of the disclosure.

In addition, consumers have even more protections when their real estate agent ***is*** affiliated with a banking organization. This is because banks and bank holding companies and their subsidiaries and affiliates are subject to the anti-tying provisions of the Bank Holding Company Act.[9] These restrictions prohibit banks and their affiliates from conditioning the provision of credit on the purchase of another product or service.

Bank involvement in real estate brokerage and management services is also consistent with safe and sound banking. First, providing these services will help to diversify the income stream of these institutions and help to improve their financial base. Real estate brokerage and management services are activities where a bank acts only as an agent for a third party, ***but does not take an ownership position in the property***. By their very nature, agency activities pose very little risk to the safety and soundness of depository institutions.

Second, under the GLB Act, the bank regulators must deem a bank to be well-capitalized and well-managed before a banking organization can participate in any of the expanded financial activities permitted under the GLB Act, including real estate brokerage and property management. Thus, only financially strong institutions would be authorized to engage in these activities.

[8] The requirement for affiliated business disclosures is part of the regulations of the Department of Housing and Urban Development that implement RESPA. 24 C.F.R. § 3500.15.
[9] Section 106(b) of the Bank Holding Company Act Amendments of 1970.

Third, banking organizations are also subject to Sections 23A and 23B of the Federal Reserve Act, which limit the amount of credit and other forms of support that a bank could provide to a real estate brokerage affiliate or subsidiary. Such limits ensure that the safety and soundness of the bank will not be negatively impacted by its subsidiaries or affiliates.

Fourth, many banking organizations already have years of experience in providing real estate activities. In fact, the purchase, sale and management of real estate are frequently significant aspects of fiduciary asset management in many bank trust departments. Because banks currently have trust personnel who provide real estate brokerage and management services on a daily basis to trust customers, providing the service outside of the trust department would not be a new activity in which banking organizations lack expertise. Thus, no new safety and soundness issues would be raised.

Finally, it is important to note that a precedent already exists for bank involvement in real estate activities. In over half of the states, state banking regulators have the authority (either explicitly, through regulatory interpretations, and through wildcard and parity statutes) to allow state-chartered banking organizations to engage in real estate activities (see the attached state-by-state listing developed by the Conference of State Bank Supervisors). Moreover, savings institutions and credit unions already have brokerage authority. Allowing banks the same rights and privileges should enhance the competition for real estate services.

Conclusion

Mr. Chairman, increased competition clearly benefits consumers and the economy. It is a catalyst for innovation, more customer choice, better service, and competitive prices. I have no doubt that my customers and my community would benefit if my small bank could offer these services.

In fact, promoting competition in financial markets was the primary motivation for passage of the GLB Act. Congress also recognized the need for regulatory flexibility in an environment where the bright lines between financial activities and between financial providers has all but disappeared. Providing real estate brokerage and property management is no exception to this rule. We strongly believe that both real estate brokerage and property management meet the criteria set forth by Congress in enacting the GLB Act.

Not only would consumers benefit from bank involvement in real estate services, but also bank involvement is consistent with safe and sound banking. All consumer protections that apply to independent realtors would apply to bank-affiliated real estate agents – plus bank-affiliated agents would be subject to additional anti-tying regulations. And because brokerage and management are agency activities, they pose no financial risk to the safety and soundness of the banking organization.

I thank you, Mr. Chairman, for this opportunity to present the views of the American Bankers Association.

Real Estate Brokerage

State	Available	Subsidiary Required	Authorization	Citation
Alabama	Yes	No	Statute	5-5A-18
Alaska	No	No	Statute	AS 06.05.272(d)
Arizona	Yes	Yes	Statute	ARS 6-184(A)(7)
Arkansas	No	No	Not Authorized	NA
California	Yes	No	Statute	Cal. Corps. C. Sec. 206 and Cal. Fin. C. Sec. 751.3
Colorado	No	No	Not Authorized	N/A
Connecticut	Yes[1]	Yes[1]	See Footnote[1]	See Footnote[1]
Delaware	Yes	Yes	Statute	Title Five, Delaware Code § 761(a)(3)
DC	Yes[2]	NR	NR	NR
Florida	Yes	Yes	Statute	658.67(6), F.S.
Georgia	Yes	No	Statute & Regulation	7-1-261, operational powers of banks; Regulation 80-5-5
Guam				
Hawaii	No[3]	No	Wildcard	NR
Idaho	Yes	No	Wildcard	NR
Illinois	No	No	Not Authorized	N/A – Express prohibition exists within IL wildcard statute that grants parity with federal thrifts, among other entities
Indiana	Yes	No	Statute	I.C. 28-1-3.1
Iowa	Yes	No	Statute	Section 524.802
Kansas	No	No	Not Authorized	N/A
Kentucky	No	No	Not Authorized	N/A
Louisiana	No	No	Not Authorized	N/A
Maine	Yes[4]	No	Regulation	Maine 9B Section 131(6-A); 9B Section 446-A; Regulation #7
Maryland	No	No	Not Authorized	N/A
Massachusetts	Yes	Yes	Statute	G.L.c.167F §2 p. 25
Michigan	Yes	No	Statute	MCL 487.14104(1)
Minnesota	No	No	Statute is Silent	N/A
Mississippi	No	No	Not Authorized	N/A
Missouri	No[5]	No	Not Authorized	N/A
Montana	No	No	Not Authorized	N/A
Nebraska	Yes	No	Incidental Powers Regulation	Department Statement of Policy #9
Nevada	No	No	Not Authorized	N/A
New Hampshire	Yes[6]	No	Regulation & Wildcard	Ban 525, Federal Savings Associations Powers
New Jersey	Yes	No	Regulation	NJAC 3:11-11.5(a)(4)

Real Estate Brokerage

State	Available	Subsidiary Required	Authorization	Citation
New Mexico	Yes	No	Wildcard	58-1-54
New York	No	No	Not Authorized	N/A
North Carolina	Yes	Yes	Statute	NCGS 53-47c(3)
North Dakota	No	No	Not Authorized	N/A
Ohio	No	No	Not Authorized	N/A
Oklahoma	No	No	Not Authorized	N/A
Oregon	No	No	Not Authorized	N/A
Pennsylvania	Yes	No	Parity Statute	7P.S. §201
Puerto Rico	No	No	Not Authorized	N/A
Rhode Island	No	No	Not Authorized	N/A
South Dakota	Yes	No	Interpretation	51-A-2-14(3)
Tennessee	Yes	No	Statute, Regulation & Wildcard	T.C.A. § 45-2-607(d); Regulation Chpt. 0180-19; 45-14-105
Texas	Yes	No- Preferred	Statute	Texas Real Estate License Act
Utah	No	No	Not Authorized	N/A
Vermont	No	No	Not Authorized	N/A
Virginia	No	No	Not Authorized	N/A
Washington	Yes[7]	No	Wildcard Authority	RCW 30.04.127
West Virginia	No	No	Not Authorized	N/A
Wisconsin	Yes	No	Statute & Regulation	221.0322 & DFI -Bkg#16
Wyoming	Yes	No	Statute	W.S.13-2-101(a)(xiii) & W.S.13-2-101(a)(xii)

SUMMARY	Yes	No	Yes	No
	26	25	6	45

NR: Not Reported.
N/A: Not Applicable.

1 The activity is permissible through a subsidiary. It may also be conducted directly under the authority provided by the "closely related activities" statute [Sect 36a-250(a)(40) of CT General Statutes] or "wild card" statute [Sect. 36a-250(a)(41) of the CT General Statutes]. To date, The Department has not formally acted on any request to conduct the activity.

2 The DC Office of Banking & Financial Institutions is presently modernizing its bank, mortgage banking, trusts, savings and loan, and credit union statutes, regulations and chartering requirements.

3 Real estate brokerage is expressly prohibited by state law, unless otherwise allowed through wildcard authority because the activity is permissible for national banks.

4 The Department would review on a case-by-case basis and refer to Sections 416 and 419-A of the Maine Banking Statute, together with Regulation 7.

5 Depository Trust Companies have real estate brokerage powers under 362.105

[6] Effective March 16, 2001, Ban 525 allows commercial banks, trust institutions and savings banks to engage in activities and make any investment in the same manner and to the same extent that the activity is permissible for federal savings associations.

[7] See also the following: Pursuant to RCW 30.04.215(3), 32.08.140(16) and 32.08.146, banks can perform the same activities federal banks can, provided that the activities are approved by the Director of the Department of Financial Institutions.

NOTE: The data included in this table is provided for information purposes only. It should not be construed to be legal guidance.